



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,777	02/02/2004	John K. Lowther	7066-1-CIP3-CON	6975

7590 06/07/2006

Brent P. Johnson
SHERIDAN ROSS P.C.
Suite 1200
1560 Broadway
Denver, CO 80202-5141

EXAMINER

SHAKERI, HADI

ART UNIT	PAPER NUMBER
3723	

DATE MAILED: 06/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

e

Office Action Summary**Application No.**

10/613,777

Applicant(s)

LOWTHER, JOHN K.

Examiner

Hadi Shakeri

Art Unit

3723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-30 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 25-30 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

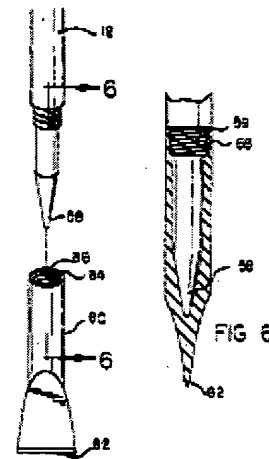
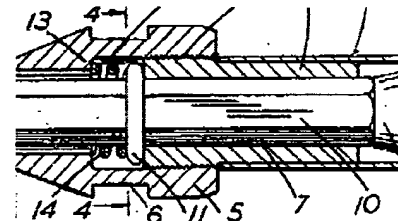
DETAILED ACTION***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 25-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over French Patent 912,611 in view of Evinger (5,370,192).

French '611 meets all the limitations of claims 25-30, e.g., impact head (8) having a proximal end forming a slide portion (10) and an impact portion (9), when utilized as a support for the removable chisel tip (60), extending beyond the stop (13), except for disclosing attaching a removal tip to the impact extension. Evinger teaches slide hammers having different tips attached to the impact extension. It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the tool of French '611 with the removable tips as taught by Evinger to adapt the tool for different applications.



Regarding the dependent claims the modified tool of prior art meets the limitations, i.e., changing the tip and repeating the action.

Conclusion

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

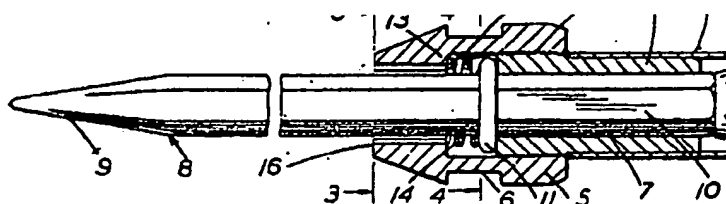
Art Unit: 3723

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Response to Arguments

4. Applicant's arguments filed March 17, 2006 have been fully considered but they are not persuasive. First it is noted that claims 25-30 were not rejected over Frame hammer in view of FR' 611 and Evinger. Although the heading of section 5 of the previous office action indicated "...over AAPA, French Patent 912,611 in view of Evinger (5,370,192)", the body of the rejection (French' 611 meets all of the limitations...except) clearly indicated that only French Patent as modified by Evinger was applied to the claims. However, the arguments as presented by the Applicant are directed to the French Patent and Evinger. The argument that FR' 611 does not disclose a removable tip attached to the impact extension is not persuasive. Even though the combination of the references (FR' 611 and Evinger) were applied to the claims, the elements disclosed by the FR' 611 and applied to the claims as recited, is further described for clarity. First it is noted that FR' 611 does disclose a stop that is defined by the shoulders (13) intended to retain the head or tool (8) by the peripheral rim (11).

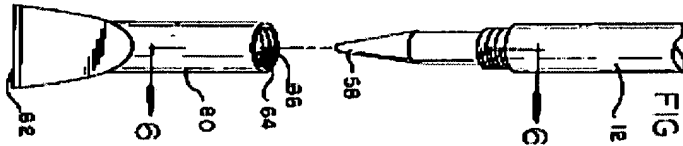
The claims recite for an impact head to include a slide portion and an impact extension and for the removable



Art Unit: 3723

tip to be attached to the impact portion. The chisel or tool (8) as disclosed by the French Patent includes a slide portion (tail 10) meeting the other limitations as recited and an impact extension (the forward portion e.g., 9). There are no limitations recited in the claims to distinguish over the tool or chisel (8) of FR' 611.

The combined references, however, read over the recited elements more clearly, i.e., when the



tip portion of FR' 611, is modified in view of Evinger to include a threaded portion for removal attachment to other types of tips, then the threaded portion would clearly define the impact extension for attachment to a tip. The argument that FR' 611 teaches away from any type of removable tip which is attached to an impact extension is not persuasive. FR' 611 does not teach away from removable tips, but only describes one method for doing so, in fact that indicates that FR' 611 is aware of desirability of having different types of tips. The arguments that Evinger does not disclose a stop and that FR' 611 does not show a threaded tip, amounts to piecemeal analysis or arguments against the references individually, for which it is noted, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hadi Shakeri whose telephone number is 571-272-4495. The examiner can normally be reached on Monday-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3723

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Hadi Shakeri', with a long horizontal flourish extending to the right.

Hadi Shakeri
Primary Examiner
Art Unit 3723
May 24, 2006